



Dexter L. Bell – New Division Director

The Division of Real Estate and the Real Estate Commission welcome Dexter Bell as the new Division Director.

On April 11, he replaced Ted Boyer, who has been appointed as Executive Director of the Department of Commerce, the Division's parent agency. In that position, Ted is now a member of Governor Michael Leavitt's cabinet.

Bell graduated from the University of Utah with a J.D. degree in 1980. He practiced real estate and business law as an attorney for Q Lube/Pennzoil in Salt Lake City for the past several years. Before that he served in several appointed federal positions with the Reagan and (first) Bush administrations in Washington D.C. He was Deputy Chief of Staff at the Federal Home Loan Bank Board and at the Office of Thrift Supervision in the U. S. Treasury Department. He also served under Chairman Jake Garn as Legal Counsel to the U. S. Senate Committee on Banking, Housing and Urban Affairs.

Bell's focus is on closing older complaint cases expeditiously, and on providing for on-line license renewal by the year 2002.

Bell is married with five children. He enjoys reading history, playing basketball, and watching college sports.

Bell's 10 years of experience in appointed political positions in the federal government served to convince him of the importance of appropriate government regulation – of not having too much or too little. For example, the thrift institution crisis came about because of perhaps too much

government regulation in the first place (on what thrifts could invest in), and then after that, too little regulation.

His experience with the thrift crisis also impressed on him the need for fair and accurate appraisals, in order to protect our economic system and the integrity of financial values.

Bell believes the real estate profession in Utah is currently fairly well-regulated, and will strive to maintain that balance between having enough regulation but not too much. "Enough" would be defined as sufficient

regulation to protect the public, as well as other real estate professionals, from unethical and illegal practices. He is impressed with the competence and dedication of the Real Estate Commissioners in the Commission's attempts to strike that regulatory balance. He also recognizes the need to step outside the perspective of the legal profession and see issues from all sides, including that of the public and the real estate profession.



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Long on Ethics

by Deborah H. Long

Regulatory agency newsletters – such as this one – remind us that licensees make mistakes, sometimes serious ones, in their dealings with the public. Violations mentioned in these publications range from trust account mismanagement, to misrepresentation, to fraud, and worse. And even though it is a relatively small percentage of professionals who are found guilty of professional misconduct, we know that they represent the “tip of the iceberg.” Members of the public often do not want to get involved in the complaint process, perceiving that it might be too cumbersome. Some aggrieved individuals may be unaware that a complaint process exists.

When I discuss the complaint cases mentioned in my state’s real estate licensing newsletter with my students, it’s not uncommon to hear this reaction: “There but for the grace of God...” In other words, these licensed professionals are relieved to see that their names have not yet appeared on those notorious back pages. But they are also expressing the concern that they have committed similar violations to those described in the newsletter. They just haven’t been caught yet. To some extent, those quarterly communiqués from our regulators are an important deterrent to practitioners who need constant reminders that their conduct is being watched.

But there are other factors that keep us from getting in trouble. One of these factors is our own ethical capacity and orientation. While many of our values were instilled in us as children and come from a variety of sources, our capacity to become even more adept at making

moral judgment usually grows as we mature and experience marriage, parenthood, and other significant life events.

Another factor in keeping us from going astray is professional standards, or codes of conduct espoused by the private and public sector. While a code of ethics doesn’t prevent misconduct, professional guidelines help us recognize the baseline for behavior. Codes of ethics set the minimum level of conduct we will tolerate from one another and help us make judgments about right and wrong. The majority of American companies subscribe to a code of ethics, acknowledging its importance in curbing workplace problems.

Many organizations realize the importance of yet another factor in minimizing opportunities for misconduct: internal controls, such as adequate supervision, training of staff, and careful review of work. It is particularly important that the rules are clearly established and consistently and fairly implemented. And while policy manuals and one-day employee orientation programs are useful in establishing ethical boundaries, they are often not enough to meet the frequent ethical challenges that many professionals face. More and more companies are establishing monitoring programs to help practitioners cope effectively – often one-on-one with work dilemmas.

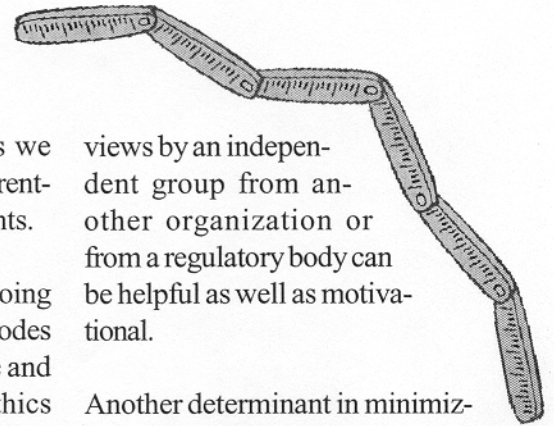
Another critical factor in minimizing opportunities for misconduct is peer or team review. Peer auditing for critical cases or issues can be an effective tool in preventing problems or preventing their repetition. Sometimes, peer re-

views by an independent group from another organization or from a regulatory body can be helpful as well as motivational.

Another determinant in minimizing misconduct is peer pressure within the organization. When the organization’s leadership has clearly articulated the values of the company and more importantly, practices these values, then it is more likely that professionals affiliated with the company will practice them as well. We learn our values and ethics from people who have influence over us: first from our parents and family; then from our teachers; and later in life, from our employers and leaders. If our leaders are corrupt, we are more likely to lower our expectations and, on occasion, respond by becoming corrupt ourselves. On the other hand, when leaders have high standards, we are more likely to conform to higher standards as well.

The last – but not necessarily the least effective – factor in controlling our conduct is government regulations. Some licensees conduct themselves professionally because they don’t want to pay the various penalties outlined by rules and laws. But we also comply with regulation because we believe that a society without rules and laws would be chaotic. So, while we may not particularly like the idea of government regulations and reminders from regulatory agencies that let us know our conduct is being measured, we also recognize the importance of some government control.

continued on next page



Pre-Sales/Reservation Agreements

As I tell my students preparing to take their state licensing exam, the last place I ever want to see them is on the back page of the licensing newsletter as the "poster child of the month" for bad judgment. It is hoped that the combination of their integrity, professional training, company values and leadership, their peers' influence, and government regulation will provide enough discipline and restraint to keep them from becoming an example to the rest of us of how not to conduct ourselves.

Copyright, 2000, Deborah H. Long. Dr. Long provides workshops on ethical decision making skills to licensed professionals and can be reached at 919-968-3742, or by e-mail at: d_long@mindspring.com.



Utah Real Estate News

Purpose: To provide licensees with the information and education they need to be successful in competently serving the real estate consumer

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*Note: On June 5, 2001, Division Director Dexter L. Bell modified the Division's policy about lot reservation agreements in response to changes in federal regulations. The earlier policy was published in the June 1998 Utah Real Estate News. The policy is now changed to allow lot reservation agreements to specify a lot and purchase price, as long as a specified disclaimer is included in the agreement. **The current Division policy is as stated below.** Conditions 2, 7, and 8 have been changed from the earlier policy, but the policy is identical otherwise.*

by Ted Boyer, Executive Director, Department of Commerce
with modifications by Dexter Bell, Division Director

The Division is frequently asked whether reservation agreements can be used to "pre-sell" or reserve lots or improved real property prior to the recording of the subdivision plat. Often a developer plans to develop a subdivision, condominium, planned unit development or other improved real property and is faced with obtaining construction or development financing. Prudent lenders want to know whether there is market demand for a product before committing construction financing. The lender wants to see sales or pre-sales as evidence of the marketability of the project.

To further complicate matters, Utah Code §17-27-811 prohibits an owner or the agent of any owner of land located in a subdivision from transferring or selling any land before the subdivision has been approved and the plat is recorded. Utah Code §10-9-801 permits municipalities to adopt similar ordinances restricting the sale of land before the subdivision is platted. The developer is placed in a "Catch 22" situation.

The Division has taken the position that in certain circumstances, the use of "reservation agreements" may be used by owners and developers to ascertain the market demand for planned projects. The rationale for this position is that a true "reservation agreement" is not a transfer, sale or offer of sale.

The question of whether or not a "reservation agreement" is a sale, transfer or offer of sale depends on a number of variables. On a case by case basis, the Division has not taken action against developers who use a "reservation agreement" prior to recordation of the subdivision plat, if the "reservation agreement":

1. Is not a binding agreement to purchase
2. ~~Expressly states in bold or highlighted text that it is not a binding agreement.~~ Expressly states in bold or highlighted text, in all capitals, on the first page of the agreement, the disclaimer shown below. The disclaimer must be separated from any other text in the agreement by at least three single-space lines and must be in type no smaller than 10 point type:

continued on page 4

Pre-Sales/Reservation Agreements

continued from page 3

THIS AGREEMENT IS NOT BINDING, IN ANY WAY, ON EITHER PARTY. YOU ARE NOT ESTABLISHING A LEGAL RIGHT OR CLAIM TO ANY LOT OR PURCHASE PRICE BY SIGNING THIS RESERVATION AGREEMENT.

3. Expressly requires the purchaser to take subsequent action to create a binding agreement, typically the execution of a Real Estate Purchase Contract.
4. Is not accompanied by delivery of a Public Offering Statement, Property Report or similar documentation implying compliance with the Uniform Utah Land Sales Practices Act (the "Act") if the lot or unit is neither registered under the Act nor exempt from the Act.
5. Requires that all deposits of fees received in connection with it be placed in escrow with a licensed Utah real estate broker or other authorized escrow with specific written instructions that the deposits or fees are refundable at any time at the option of the potential purchaser.
6. Complies with the reservation guidelines published by the Department of Housing and Urban Development found in 24 CFR, Ch. X.
7. ~~Does not refer to a specific lot or metes and bounds description.~~
8. ~~Does not refer to a specific purchase price.~~

The foregoing discussion of "reservation agreements" does not avoid the obligation to comply with the requirements of the Utah Land Sales Practices Act if the particular subdivision is not exempt under the Act. If a proposed subdivision is required to be registered under the Act, the developer may receive a temporary permit to begin a sales program while the registration is in process (see Utah Code §57-11-5). However, the developer must determine if the program is in compliance with the County or municipal ordinances even though the Division policy is not violated.

"My philosophy is that not only are you responsible for your life, but doing the best at this moment puts you in the best place for the next moment."

Oprah Winfrey

Real Estate Disciplinary Sanctions



BABCOCK, MIKE W., Inactive Sales Agent, Morgan. License renewed on probationary status due to a misdemeanor conviction since his last renewal. Until his next renewal, Mr. Babcock will be required to notify any broker with whom he licenses about his misdemeanor conviction.

BEACON MARKETING RESEARCH, Salt Lake City. Cease and Desist Order issued February 7, 2001, prohibiting acting as a real estate broker without a license by assisting in the procurement of prospects for real estate transactions. The Cease and Desist Order also prohibited violation of the Utah Residential Mortgage Practices Act by soliciting homeowners and referring prospects for residential mortgage loan business in exchange for valuable consideration. #RE01-02-01.

C-21 AT THE ROCKIES and CENTURY 21 MARKETING AND RESEARCH, American Fork, dba BEACON RESEARCH and BEACON MARKETING RESEARCH, Salt Lake City. Cease and Desist Order issued March 7, 2001 prohibiting the use of unlicensed persons to assist in procuring prospects for real estate transactions. The Cease and Desist Order also prohibited violation of the Utah Residential Mortgage Practices Act by soliciting homeowners and referring prospects for residential mortgage loan business in exchange for valuable consideration. Following the issuance of the Cease and Desist Order all entities contacted the Division and agreed to cease the prohibited activities. #RE01-02-01.

CHRISTENSEN, JOSH, Sales Agent, North Salt Lake. License granted on probationary status due to a misdemeanor conviction. Until his first renewal, he will be required to notify any broker with whom he licenses about his misdemeanor conviction.

DIMOND, ANGELIQUE V., Sales Agent, Grantsville. Conditional real estate license revoked on November 30, 2000 after the criminal background check required of new sales agents

revealed that she failed to disclose several misdemeanor cases on her application for a sales agent license. #REFP20-13.

FRANCO, LOUIS, Associate Broker, St. George. Consented to pay a \$1,000.00 fine and have his license placed on probation for one year based on a transaction in which he failed to supervise a sales agent while he was the principal broker of C-21 Zion Realty in St. George. The sales agent receipted \$30,000.00 earnest money which she did not have in hand. When the check was later received, it failed to clear. The Division alleged that the sales agent failed to inform the seller's agent that the check did not clear. The sales agent maintained that the title company did not tell her the check had failed to clear. #RE99-05-03.

H. SCOTT PROCTOR and COLDWELL BANKER COMMERCIAL ETN, Las Vegas, NV. Cease and Desist Order issued January 23, 2001 prohibiting acting as real estate brokers in Utah without Utah licenses. Respondents advertised the Super 8 Motel in Clearfield, Utah for sale and sent promotional materials concerning the property to a Utah resident. #RE20-12-14.

HALLS, DALE SCOTTY, Sales Agent, Orem. After a formal hearing, Mr. Halls' license was suspended for nine months beginning October 30, 2000 and placed on probation for one year thereafter, based on conviction of a criminal offense involving moral turpitude in a transaction which was not related to real estate. He was also fined \$500.00 and ordered to complete remedial education. #RE97-03-06.

HAWS, JOAN A., Inactive Sales Agent, formerly licensed with C-21 Zion Realty, St. George. Consented to pay a \$2,000.00 fine and have her license placed on probation for one year. Ms. Haws receipted earnest money although she did not have a check in hand. When she later received the buyer's \$30,000.00 check and delivered it to the title company, it failed to clear. The Division alleged that Ms. Haws was informed that the check had failed to clear and that she failed to inform the seller's agent. Ms. Haws claims that the title company did not tell her that the check had failed to clear. #RE97-06-12.

JONES, WILL, Principal Broker, Pine Valley Realty, Alpine. Consented to pay a \$1,000.00 fine and have his license placed on probation for one year during which time he may not manage others' property. The disciplinary action was based on failure to supervise rental property management. A Division audit found no individual ledgers, no check register with current balances and transaction numbers, and no trust account reconciliations. #RE97-04-01.

KIFER, MERVIN A., Sales Agent, Riverton. License renewed on probationary status due to minor misdemeanors since his last license renewal.

KNUDSEN, EMIL K., Associate Broker, Orem. Consented to a one-year license probation based on conviction of a misdemeanor and to a \$300.00 fine for failing to disclose the pending case on his application for renewal. In mitigation of the failure to disclose, Mr. Knudsen did report the case to the Division after conviction. #RE20-12-05.

LUTUI, ILAISAANE F., Sales Agent, West Valley City. License renewed on probationary status due to misdemeanor conviction since her last license renewal.

MACEY, MARTIN W., Certified Instructor, Sandy. Application for renewal of instructor certification denied on February 23, 2001, based on violation of the administrative rules governing instructor certification by giving students continuing education certificates for a course which was certified for live instruction although no classroom instruction had been provided.

MACKAY, RICHARD, Sales Agent, Salt Lake City. Conditional licensed revoked on Dec. 4, 2000 after the criminal background check required of new sales agents revealed that he had failed to disclose misdemeanor convictions. After a post-revocation hearing, the Commission and the Acting Director concluded that Mr. Mackay had no intention to deceive on his application. His license was reinstated effective March 21, 2001. #REFP20-14.

MATHEW J. HULL, Sales Agent, West Jordan. Conditional real estate sales agent license revoked, effective January 25, 2001 after the criminal background check required of new sales agents revealed that he failed to disclose past and pending misdemeanor cases in his application for a sales agent license. #REFP-01-01.

MUNFORD, DAVID, Principal Broker, Impression Group Referral Real Estate, LLC, Midvale. Consented to pay a \$200.00 fine, based on violating Administrative Rule R162-6.1.9 by offering a \$50.00 gift certificate to homeowners for referral of a prospect which resulted in a real estate transaction. Mr. Munford maintains in mitigation that he did not understand that the administrative rule on "token gifts" which allows a "thank you gift" applies only to unsolicited referrals of prospects. #RE20-08-15.

NIELSEN, ELWOOD L. "LES", Principal Broker, Real Estate One, Inc., Sandy. Application for renewal denied on April 20, 2001, based on losing control of a transaction and failing to meet his fiduciary duty to his client, and on demonstrating error in judgment, dishonesty, and a lack of forthrightness. Mr. Nielsen has requested Agency Review of the denial of his renewal.

Disciplinary Sanctions

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OLCH, JONATHAN, Principal Broker, Bald Eagle Realty, Inc., Park City. Consented to pay a \$500.00 fine based on an admission of a technical violation of Administrative Rule R162-6.1.5.8 by advertising a property in a 1998 brochure although the listing with the owner had expired at the end of August, 1997. The owner complained to the Division that the property was advertised without his permission and at an outdated price. Mr. Olch maintained in mitigation that he was required to submit a mock-up of the brochure to the printer while the listing was still in effect, that he was led to believe that the owner would sign a new listing, and that his office manager concealed from him the fact that a new listing had not been signed as part of her broader scheme to embezzle over \$40,000.00 from him, a crime for which she was subsequently convicted. #RE99-05-10.

READ, KATHY JO, Sales Agent, Prudential 1st Choice Real Estate, Layton. Consented to pay a \$350.00 fine and complete an agency course, based on entering into a buyer agency agreement with buyers while a prior buyer agency agreement with another brokerage was still in effect. Ms. Read maintains that the buyers told her that they would not be using the other agent as their agent on the purchase of the home in question. Ms. Read also failed to obtain informed consent to limited agency. #RE20-10-07.

READ, SCOTT E., Associate Broker, Prudential 1st Choice Real Estate, Layton. Consented to pay a \$350.00 fine and complete an agency course. While he was branch broker, Mr. Read represented buyers on a home listed by his branch with-

out making sure that informed written consent to limited agency had been obtained. He also continued to represent the buyers after he learned that they had been working with an agent in another brokerage without clarifying whether there was a pre-existing Buyer Agency Agreement between the buyer and the other agent. #RE01-01-12.

ROBBINS, DENNIS R., Sales Agent, Salt Lake City. License renewed on probationary status due to misdemeanor convictions on the condition that he finish paying his fines.

ROBERT F. FITZGERALD, SAM APOSTLE, and APOSTLE FITZGERALD & COMPANY, Phoenix, AZ. Cease and Desist Order issued January 31, 2001 prohibiting acting as real estate brokers in Utah without Utah licenses. Respondents were marketing the Microtel Inn & Suites Hotel/Motel in Salt Lake City. #RE01-01-01 and RE01-01-15.

ROBERTS, ALISON A., Sales Agent, Salt Lake city. License granted on probationary status due to misdemeanor convictions. Until her first renewal, she will be required to notify any broker with whom she licenses about her misdemeanor convictions.

SCRIBNER, BEN W., Inactive Sales Agent, Salt Lake City. Consented to a three-month suspension of license and payment of a \$500.00 fine based on a misdemeanor conviction and failing to report the conviction to the Division within the required ten days. #RE01-02-17.

SMITH, JANNINE B., Sales Agent, Coldwell Banker Aspen Brook Realty, Vernal. Surrendered her license effective May 18, 2001 and agreed not to apply for a new license for 18 months, with no promise that an application for a new license will be approved. Ms. Smith sold homes to two different couples and signed phony leases with the couples, acting as their landlord, to enable them to collect rental subsidy payments from their employer. She received rent checks from the employer over a total of 29 months, which she cashed and forwarded to the couples to use to make their mortgage payments. #RE97-02-07.

TAYLOR, RANDALL S., Sales Agent, Ogden. License granted on probationary status based on minor misdemeanor convictions. Until his first renewal, he will be required to notify any broker with whom he licenses about his misdemeanor convictions.

TERRANCE HUNT, GRANT WIMBUSH, and GRUBB & ELLIS DENVER OFFICE. Cease and Desist Order issued January 24, 2001, prohibiting acting as real estate brokers in Utah without Utah licenses. Respondents solicited Utah residents by direct-mail advertising to purchase an apartment complex located in Colorado. #RE01-01-10 and RE01-01-11.

TRUST ACCOUNT SEMINAR

The seminar will cover the Administrative Rules for trust accounts established under the Utah Real Estate license law. (Taught Live)

Location: 2970 East 3300 South, Salt Lake City

Dates: Sept. 7, Oct. 12, Nov. 2, Dec. 7

Time: 9:00 am to 12:00 noon

Credit: 3 hours continuing education

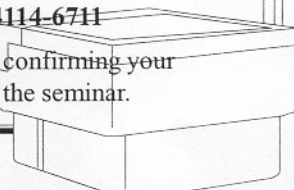
You **MUST PREREGISTER** by sending \$5 with your name, address, phone number and license number to:

Division of Real Estate

Box 146711

Salt Lake City, UT 84114-6711

You will receive a phone call confirming your registration the week of the seminar.



TRASK, DONALD F., Sales Agent, West Jordan. License granted on probationary status based on disciplinary action against his chiropractor license in another state and a related criminal conviction. Until his first renewal in January, 2003, Mr. Trask will be required to notify any broker with whom he licenses about his past licensing action and past conviction.

WATKINS, CHRISTOPHER M., Sales Agent, GT Investment Realty, Draper. License renewed on probationary status due to recent actions by the Utah Division of Securities and the NASD based on technical violations. The probationary status ended once his fine was paid to the NASD.

WAYNE, WILLIAM G., Principal Broker, Thomway Real Estate, Salt Lake City. License surrendered effective March 31, 2001. In February, 1992, Mr. Wayne was convicted of Second Degree Felony Sex Abuse of a Child and Second Degree felony Forcible Sexual Abuse in Third District Court Case 911900744. Mr. Wayne thereafter obtained renewal by misrepresenting on his license renewal forms when he answered "No" to the question regarding criminal convictions. The Division learned of the convictions in January, 2001. #RE01-01-07.

WIGGINS, DARRELL L., Sales Agent, Provo. License granted on probationary status based on past misdemeanor convictions. Until his first renewal in January 2003, Mr. Wiggins will be required to notify any broker with whom he licenses about his past misdemeanor convictions.

Moving to Another State?

The Division frequently gets calls from agents who are thinking about doing a transaction that involves another state. They want to know what the other state's views and laws are. Because we don't regulate and/or enforce another state's laws, we inform the agents that they should call the other state.

For those licensees who are needing information from any other state, we would encourage you to access www.ARELLO.org. That is the web site for the Association of Real Estate License Law Officials. From that site you will be able to obtain phone numbers and addresses of every state in the United States and every province of Canada.

Dealing With Multiple Offers

The Commission receives numerous calls regarding multiple offers. There seems to be confusion among licensees as how to handle multiple offer situations. Here are a few basic guidelines:

1. Always, always present all written offers as soon as possible after receipt. Do not under any circumstances wait until the seller has accepted or countered one offer before presenting a second offer. Imagine your seller's horror if he or she were to accept an offer for \$100,000 only to find out that an offer for \$120,000 was waiting in the wings!
2. It is important to be especially careful when there are multiple offers and one of them is your buyer and one is another agent's buyer. If you do not present the offer as timely as possible, suspicion will be raised as to whether the other agent's contract was held back because of the possibility of a dual commission payment.
3. Let the seller decide which offer to choose. While you are there to offer advice as a professional, it is important to allow the seller to choose the offer he or she ultimately desires, especially in a multiple offer situation.
4. If you cannot get to the sellers' home or office immediately, call or fax them to let them know that another offer has come in and that they need to consider it before making a decision on prior offers.
5. Make sure that the seller only acts upon one offer in a definitive way. For instance, a seller should not counter two of the offers, as both buyers may accept the counteroffer. The seller will need to counter or accept one offer and either reject or hold off on all other offers.

Reprinted with permission from the South Dakota Real Estate View, December 2000/January 2001

Appraiser Disciplinary Sanctions



ALVEY, CODY H.,
Certified Residential
Appraiser, Draper.
Consented to pay a

\$1,000.00 fine and agreed not to supervise other appraisers or sign as the certified appraiser for other appraisers for two years from February 13, 2001, based on having signed as the certified appraiser on two appraisals without researching the listing and sales histories on the properties. #AP20-11-10.

BITTON, CHRISTIAN E., State-Certified Residential Appraiser, Salt Lake City. Consented to pay a \$1,000.00 fine, and complete a USPAP course and a Cost Reproduction class in settlement of a case involving USPAP violations. The subject property consisted of two rental structures on one lot which the city had classified as a legal non-conforming duplex. Mr. Bitton identified the property as a single-family residence with a guest house. His appraisal failed to disclose that the owner of the rental property was receiving rental income from both units and failed to include an income approach. #AP01-03-05.

CLOWARD, STEVEN, Certified Residential Appraiser, Orem. Consented to pay a \$2,000.00 fine and take a USPAP course, in settlement of cases which involved appraisals performed while he was a registered appraiser. In one case, he did not have adequate file data to support his adjustments and conclusions in a summary report. In the other case, his report contained numerous factual errors and internal inconsistencies. Mr. Cloward maintained in mitigation that the errors and omissions were unintentional careless mistakes and that he had no intent to mislead. #AP98-11-06 and AP97-07-18.

DENSLEY, DALE, State-Registered Appraiser, Mapleton. Consented not to apply for certification for one year, to pay a

\$2,500 fine, and to complete remedial education in settlement of two complaints involving appraisals that violated USPAP. In one appraisal, he failed to disclose that he lacked knowledge and experience in appraising manufactured homes and knowledge and experience regarding the market in the area. In the other appraisal, he failed to verify listing history or the party who held title to the property. In mitigation, Mr. Densley maintained that his errors were unintentional mistakes and that he had no intent to mislead. Mr. Densley has been approved for State-Licensed Appraiser status, effective May 24, 2001. #AP99-04-39, #AP20-10-01.

HATCH, RAYMOND T., Certified General Appraiser, Salt Lake City. After a formal hearing, Mr. Hatch's certification was revoked effective Jan. 9, 2001, based on making repeated material misrepresentations to the Division. Mr. Hatch failed to disclose past criminal history on his original application for certification and failed to disclose new criminal cases on each of two subsequent renewals. #AP20-02-12.

HODGES, JULIE, Registered Appraiser, Murray. Consented to pay a \$1,000.00 fine and to withdraw her application for certification, based on appraisals on two different properties in which she overlooked listing history or previous sales history. As part of the settlement, Ms. Hodges agreed not to submit a new application for certification for at least two years from February 13, 2001. #AP20-11-09.

JONES, KENNETH F., Certified General Appraiser, Salt Lake City. Renewal denied on February 13, 2001, based on: 1) a continued pattern of failure to supervise junior appraisers and failure to verify information, even after complaints had been brought to his attention; 2) multiple examples of lack of competency and multiple misleading reports; and 3) fail-

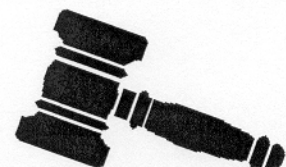
ure to acknowledge the potential harm to his clients and the public as a result of misleading appraisal reports.

LARSEN, ALLEN G., Registered Appraiser, Woodland Hills. Consented to pay a \$500.00 fine and complete a 15-hour USPAP class based on a deficient appraisal report completed when he was a new appraiser. In mitigation, Mr. Larsen maintains that since the time of the appraisal in question, he has worked under the supervision of a different certified appraiser who has provided better training, input, and structure to his appraisals. #AP98-12-23.

MAHMOOD, SUNI, State-Registered Appraiser, Salt Lake City. Registration revoked based on failure to properly disclose his criminal history on his original application for registration in 1992 and his repeated failure to disclose his prior criminal history on his subsequent applications for renewal. #AP20-12-01.

PETERSEN, WILLARD R., State-Licensed Appraiser, Garden City. Surrendered his license effective July 10, 2001 in lieu of continuing to respond to the Division's investigation of a complaint filed against him. Mr. Petersen maintained in mitigation that he was not guilty of anything except that he could have filled out the appraisal report form in a more precise way. #AP99-09-17.

RAWLE, MATTHEW C., Registered Appraiser, Provo. Registration reinstated on probationary status due to a misdemeanor conviction. The probationary status will last until Mr. Rawle pays his fine in the criminal matter.



New RESPRO Guide Helps Online Agents Avoid RESPA Violations

The Real Estate Services Providers Council (RESPRO) has published an updated RESPA guide for real estate sales associates, loan officers, mortgage brokers, title agents, and other front-line salespersons.

According to RESPRO Executive Director Sue Johnson, the book, "RESPA Guide to Referral Fees: Do's & Don'ts for Salespersons," is a response to increased marketplace confusion over what referral activities are and are not allowed under the Real Estate Settlement and Procedures Act.

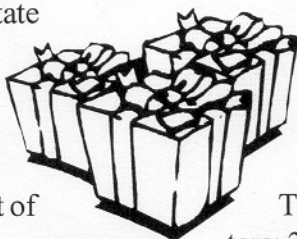
"Many of our members' employees and real estate agents associates have been bombarded by offers of fees, part-time employment, chances to win prizes, and other incentives in exchange for referrals," said Johnson, who noted the trend has particularly increased since the advent of the Internet.

"We updated our RESPA Guide to help our members and others in the industry, with their legal counsel, to educate their front-line salespersons about which offers are and which are not covered under the Act."

RESPA was first passed in 1974 to prohibit "kickbacks" for the referral of home buying and financing services. The law is currently being rewritten, but a consensus had been difficult to find in the rapidly evolving financial services arena.

RESPRO has been consistently at the forefront of working with HUD and Congress on what a new RESPA should look like.

The RESPRO guide describes RESPA's basic prohibitions and penalties for non-compliance. It also describes real-life scenarios involving incentive offers – in both the paper-based and Internet world – and comments on whether the offer described in each scenario violates RESPA.



The guide is available from RESPRO headquarters: 202-408-7038 or by e-mail at:

respro@erols.com.

Reprinted with permission from *Real Estate Intelligence Report*, Agency Law Quarterly, July 2000.
www.realestateintelligence.com

HUD Issues Consent Order

(WASHINGTON) – The National Multi-Housing Council is alerting its members to a new HUD ruling that limits what questions may be asked of potential renters who appear to be disabled.

The HUD consent order (HUD v. Wilmette Real Estate Management Co., No. HUDALJ 05-98-0148-8) was issued in an administrative case involving a rental housing provider accused of discriminating against four individuals with mild mental retardation.

HUD alleged that the property owner acted illegally in asking the applicants if they could live independently and nonviolently, and by requiring cosigners for their leases but not for the leases of other applicants.

The housing provider agreed to pay \$30,000 in damages to the complainants.

Reprinted with permission from the *Real Estate Intelligence Report*, Vol. 7, No. 13, March 2001.
www.realestateintelligence.com

In Memoriam

The Division of Real Estate expresses condolences to the families of the following real estate licensees who have recently passed away:

Rue Arthur Abraham	Richfield
Glen M. Briem	Layton
Alfred Etzel	Price
Monte C. Hansen	SLC
Derrel R. Johnstun	Willard
Elias W. Smith	SLC
David G. Young	SLC

Ten Ways to Ensure a Smooth Real Estate Transaction

- 1 Everything in Writing.** Put all agreements, listings, representations and other discussions in writing. For example, if an agent agrees to advertise in certain newspapers or agrees to purchase a home warranty plan, the details should be in writing. Furthermore, document agreement to any verbal understandings, such as the timing of possession. If a dispute later arises, the written documentation will help to clarify any issues.
- 2 Timely Complete Agency Disclosure Forms.** Be mindful of the "triggering events" that necessitate the completion of an agency disclosure form. Keep a supply with you at all times in case they are needed. Remember to note the date, reason, and time if a client or customer refuses to sign the form.
- 3 Copy Documents.** Many parties complain they never received important information or documentation from an agent. Be diligent in making sure the client or customer receives copies of all pertinent documentation. Even when documents are faxed, verify the party's receipt with a follow up phone call.
- 4 Know the Limits of Your Expertise.** Should you find yourself in a situation where you don't know the absolute answer to a question, the best option is to advise the party that you will get back to him/her. This will avoid dispensing of misleading and/or inaccurate information and ensuing misunderstandings.
- 5 Discuss Home Inspections and Legal Representation.** The commission hears many complaints from parties angry about a leaky basement or misunderstandings about contractual terms/agreements. Unfortunately, many parties hold the agent responsible. The agent may avoid future complaints if clients and customers utilize these options.
- 6 Promptly Return Phone Calls/E-mail.** Nothing is more frustrating for an eager client and customer than the inability to get any timely response from their agent. Failure to swiftly respond to an inquiry can result in a complaint over untimely offers or unprofessional conduct.
- 7 Monitor Advertising.** Exercise diligence in assuring advertising is accurate and not misleading. Take steps to verify acreage, zoning, amenities and photographs of the listing. Respond rapidly to correct ads with mistakes. Initial caution and attention to detail in all advertising can prevent misunderstandings and false expectations.
- 8 Understand Earnest Money.** Deposit these funds in accordance with the contract; redeem notes when contractually obligated to; and appropriately release funds when necessary. Remember that a broker cannot release funds without either the consent of both the buyer and seller or pursuant to a court order.
- 9 Don't Forget Fair Housing.** Remember that *all* agency agreements must contain fair housing language. Additionally, verify the fair housing language contained in your agency agreements reflects the modifications of H.B. 264, of the 123rd General Assembly, effectively changing the word "handicap" to "disability."
- 10 Residential Property Disclosure Form.** Agents who turn a blind eye to inaccuracies in a residential property disclosure form are setting themselves up for a complaint. Advising clients to be honest and forthright on the form may prevent complaints against an agent for undisclosed problems with a property.

Reprinted with permission from the Ohio Division of Real Estate and Professional Licensing Newsletter, Winter 2000/2001.

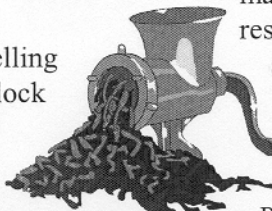
Buyer Broker Duties

Wyrick vs. Tillman Realty (2001 Tex.App., No. 03-00-00061-CV)

In this case, the appeals court ruled that when a buyer broker claims he "knows the neighborhood," he can be held accountable for his claimed expertise.

Linda Wyrick hired Jon Tillman of Tillman Realty in 1996 to help her find a home in New Braunfels, Texas, stating she wanted a "quiet, safe neighborhood." Tillman, who had lived in the community for many years, agreed to act as her buyer agent. A home Wyrick thought would be suitable was found and she purchased it.

A short time later she discovered a foul smelling meat-processing plant was located only a block away. Also, she discovered that an unused - but not abandoned - railroad right-of-way was directly across the street behind a row of houses. In 1998, the right-of-way was reactivated.



Wyrick sued Tillman for violating the Texas Deceptive Trade Practices Act. The case was dismissed in the lower courts. Wyrick appealed, and the Texas Court of Appeals found for Wyrick and remanded the case back for trial.

The case came down to three critical points:

- Tillman contended he did not know about the tracks or the processing plant and there is no duty to disclose facts or information not known.
- He argued he had no duty to disclose facts regarding other properties.
- Wyrick said she had driven around the neighborhood to make her own inspection, which Tillman argued lifted any burden from him.

The appeals court split its decision in sending the case back for trial.

First, it ruled in Tillman's favor on the first issue, agreeing he was not required to disclose things he didn't know.

On the second issue, however, the court found against the broker. The court noted he had promised to act as an exclusive buyer agent and had pointed out to Wyrick that,

"he had lived in New Braunfels for a long time and was familiar with and knowledgeable about the community and neighborhoods. Tillman also told her that the neighborhood in which the house was located was then and historically had been 'indeed a quiet and safe neighborhood.'" The court ruled that Tillman had used his words to gain Wyrick's trust, which induced her to buy the house.

(Tillman counter-argued, to no avail, that the statements were true at the time they were made and that he had no actual knowledge of the pending reopening of the right-of-way or the emissions from the meat-processing plant.)

The court also ruled against Tillman on the third point: The idea that by driving around the neighborhood Wyrick had made her own inspection - thus absolving him from any responsibility. The court noted that Wyrick had only driven around the area at night when the railroad right-of-way would have been hard to see and the meat-processing plant could be missed.

Reprinted with permission from Real Estate Intelligence Report, Agency Law Quarterly, Spring 2001.
www.realestateintelligence.com

Real Estate Licensee Summary Report (as of July 31, 2001)

ACTIVE

CN -	Registered Real Estate Companies	1812
MN -	Registered Property Management Companies	74
BO -	Branch Offices	109
PB -	Principal Brokers	1892
BB -	Branch Brokers	109
AB -	Associate Brokers	984
SA -	Sales Agents	7673

INACTIVE

PB -	Principal Brokers	439
SA -	Sales Agents	3635

TOTAL		16,727
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